

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:10-CV-562-D

OBAMIKE ALSTON, and)
FIKRIYYAH ALSTON,)
)
Plaintiffs,)
)
v.)
)
BANK OF NEW YORK MELLON,)
NOVASTAR MORTGAGE, INC.,)
SAXON MORTGAGE SERVICE, INC.,)
MERSCORP, INC.,)
)
Defendants.)

ORDER

On April 8, 2011, defendants Bank of New York Mellon, Novastar Mortgage, Inc., Saxon Mortgage Service, Inc., and MERSCORP, Inc., moved to dismiss plaintiffs Obamikel Alston and Fikriyyah Alston's third amended complaint for failure to state a claim upon which relief can be granted [D.E. 33]. On May 12, 2011, plaintiffs responded in opposition [D.E. 38, 39]. On May 26, 2011, defendants replied [D.E. 40].

The court has reviewed plaintiffs' third amended complaint under the governing standard. See, e.g., Fed. R. Civ. P. 12(b)(6); Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–56, 563 (2007); Coleman v. Md. Ct. of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), cert. granted, 131 S. Ct. 3059 (2011); Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008); Goodman v. Praxair, Inc., 494 F.3d 458, 464 (4th Cir. 2007) (en banc); Kloth v. Microsoft Corp., 444 F.3d 312, 319 (4th Cir. 2006). The motion to dismiss [D.E. 33] is GRANTED. See, e.g., Vogler v. Countrywide Home Loans, Inc., No. 1:10CV370, 2010 WL 3394034, at *2–9 (M.D.N.C. Aug. 26, 2010) (unpublished), report and recommendation adopted, No. 1:10CV370, [D.E. 36] (M.D.N.C. Sept. 29, 2010) (unpublished); see also Horvath v. Bank of New York, N.A.,

641 F.3d 617, 621–26 (4th Cir. 2011); Schafer v. Citibank, N.A., No. 1:10-CV-10 (GBL), [D.E. 41] slip op. at 13–15, 21–22 (E.D. Va. Aug. 3, 2010) (unpublished), aff'd, 2011 WL 4478060 (4th Cir. Sept. 28, 2011) (per curiam) (unpublished); Suntrust Mortg., Inc. v. Busby, 651 F. Supp. 2d 472, 490–92 (W.D.N.C. 2009).

SO ORDERED. This 30 day of September 2011.


JAMES C. DEVER III
United States District Judge